



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-Services, Inc.--Reconsideration

File: B-256239.3

Date: November 23, 1994

DECISION

Tri-Services, Inc. requests reconsideration of our dismissal of its protest of the award of a contract to Rohman Services, Inc. under request for proposals (RFP) No. F01600-93-RA012, issued by the Department of the Air Force for test, measurement, and diagnostic equipment repair, calibration, and certification services. We dismissed Tri-Services's protest on the basis that Tri-Services was not an interested party to protest the award.

We affirm our prior decision.

The RFP, issued as a small business set-aside, provided for the award of a firm, fixed-price, requirements contract, with a base contract period of 1 year, with four 1-year options. The RFP provided that award would be made to the responsible offeror whose offer, conforming to the solicitation, was determined to be most advantageous to the government, cost and other factors considered. The Air Force received five proposals, including the proposals submitted by Tri-Services and Rohman, by the RFP's closing date. The proposals were evaluated, discussions were held, and best and final offers (BAFO) were requested and received. The agency determined that Rohman's proposal represented the best overall value to the government, and made award to that firm.

Tri-Services protested that the agency's selection of Rohman for award was unreasonable and that the agency acted improperly by failing to provide Tri-Services with a pre-award notice that Rohman was the apparent successful offeror. Tri-Services also contended that the agency's affirmative determination of Rohman's responsibility was unreasonable and evidenced bad faith.

We dismissed Tri-Services's protest because under the Competition in Contracting Act of 1984 and our Bid Protest Regulations, our Office may only decide a protest filed by an "interested party," which is defined as an actual or

prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2) (1988); 4 C.F.R. § 21.0(a) (1994). As explained in our prior decision, Tri-Services had failed to submit any pricing for the 4th option year as required by the RFP. The submission of such information was a material requirement of the RFP, and Tri-Service's failure to submit prices for the 4th option year rendered its proposal unacceptable. Siegels, Inc., B-231030, Apr. 8, 1988, 88-1 CPD ¶ 416. Because there was another acceptable offeror who would be in line for award if Rohman's proposal were rejected, Tri-Services was not an interested party to protest the award of the contract to Rohman. Collins & Aikman Corp., B-247961, July 22, 1992, 92-2 CPD ¶ 41.

In its request for reconsideration, Tri-Services argues that our decision ignored the contracting officer's discretion to waive Tri-Services's failure to submit pricing for the 4th option year as a "minor irregularity." Contrary to Tri-Services's assertion, the contracting officer did not have discretion to waive Tri-Services's failure to submit pricing for the 4th option year as a minor irregularity. As stated previously, the submission of such pricing was a material requirement of the RFP, and as such, it simply could not be waived. Tektronix, Inc., B-244958; B-244958.2, Dec. 5, 1991, 91-2 CPD ¶ 516.

Tri-Services also contends in its request for reconsideration that "(b)ecause GAO has violated its own regulations at 4 C.F.R. § 21.3(m) by issuing a dismissal in August that should have been issued [upon receipt of the agency report] in April, the dismissal [of Tri-Services's protest] is based on an error of law." In Tri-Services's view, our decision to further develop the protest rather than dismiss it upon receipt of the agency report "serve[d] as a constructive determination by GAO" that Tri-Services's was an interested party to protest the award of a contract to Rohman.

Contrary to the protester's assertion, our decision to develop a protest, as opposed to summarily dismissing it, does not represent a determination that the protest complies with the requirement established by statute and regulation

¹4 C.F.R. § 21.3(m) states, in pertinent part, as follows:

"When the propriety of a dismissal becomes clear only after information is provided by the contracting agency or is otherwise obtained by the [GAO], it will dismiss the protest at that time."

that a protester be an interested party. Biomedical Research Inc.--Recon., B-249522.2, Apr. 16, 1993, 93-1 CPD ¶ 324; Loque Boston Ltd. Partnership--Recon., B-246796.2, July 2, 1992, 92-2 CPD ¶ 1. As such, the fact that we did not dismiss Tri-Services's protest upon receipt of the agency report, but rather chose to further develop the protest, did not preclude us from properly dismissing the protest upon concluding that dismissal was the appropriate resolution. Id.

Our prior decision is affirmed.



Ronald Berger
Associate General Counsel